

**STATE BOARD OF EQUALIZATION**  
**BEFORE THE ADMINISTRATIVE JUDGE**

IN RE: Cathy Dempsey )  
Dist. 5, Map 137O, Control Map 137O, Parcel 70.00 ) Sumner County  
Residential Property )  
Tax Year 2006 )

**INITIAL DECISION AND ORDER**

**Statement of the Case**

The subject property is presently valued as follows:

<u>LAND VALUE</u>	<u>IMPROVEMENT VALUE</u>	<u>TOTAL VALUE</u>	<u>ASSESSMENT</u>
\$ 40,600	\$281,600	\$321,900	\$80,475

An Appeal has been filed on behalf of the property owner with the State Board of Equalization on August 3, 2006.

This matter was reviewed by the undersigned administrative law judge pursuant to Tennessee Code Annotated (T.C.A.) §§ 67-5-1412, 67-5-1501 and 67-5-1505. This hearing was conducted on January 16, 2007 in the Sumner County Property Assessor's Office. Present at the hearing were Cathy Dempsey, the taxpayer who represented herself, Mr. John Isbell, the Sumner County Property Assessor and Mr. Dan Linville, the Chief Deputy.

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

Subject property consists of a single family residence located at 106 Cedar Ridge Way in Hendersonville, Tennessee.

The taxpayer, Ms. Dempsey, contends that the property is worth \$276,000 based on "an appraisal done on the home in 2003<sup>i</sup>, an insurance company's estimate of value and like/similar homes in the area". Ms. Dempsey's exhibits consisted of a document called *Property Update Report by Donna L. Harrison*, it should be noted that Ms. Harrison did not appear at the hearing and the sales data submitted was not adjusted pursuant to the acceptable appraisal industry standards.

The assessor contends that the property should be valued at \$321,900, based upon the presumption of correctness of the Sumner County Board of Equalization. The county also presented un-adjusted property record cards, these properties were not in a sales comparison grid and showed no analysis.



While the presentation by the taxpayer shows that she put a lot of time and effort were put into preparing for this hearing she failed to properly “compare” her properties to the subject.

The germane issue is the value of the property as of January 1, 2006. The basis of valuation as stated in T.C.A. § 67-5-601(a) is that “[t]he value of all property shall be ascertained from the evidence of its sound, intrinsic and immediate value, for purposes of sale between a willing seller and a willing buyer without consideration of speculative values . . . .”

After having reviewed all the evidence in this case, the administrative judge finds that the subject property should be valued at \$321,900 based upon the presumption of correctness attaching to the decision of the Sumner County Board of Equalization.

Since the taxpayer is appealing from the determination of the Sumner County Board of Equalization, the burden of proof is on the taxpayer. See State Board of Equalization Rule 0600-1-.11(1) and *Big Fork Mining Company v. Tennessee Water Control Board*, 620 S.W. 2d 515 (Tenn.App. 1981)

As the Assessment Appeals Commission noted in *Payton and Melissa Goldsmith*, Shelby County, Tax year 2001, in quoting the Tennessee Supreme Court in the case of Carroll v. Alsop, 107 Tenn. 257, 64 S.W.193 (1901):

It is no ground for relief to him; nor can any taxpayer be heard to complain of his assessments, when it is below the actual cash value of the property, **on the ground that his neighbors' property is assessed at a less percentage of its true or actual value than his own.** When he comes into court asking relief of his own assessment, he must be able to allege and show that his property is assessed at more than its actual cash value. He may come before an equalizing board, or perhaps before the courts, and show that his neighbors' property is assessed at less than its actual value, and **ask to have it raised to his own**, . . . (emphasis supplied)

In a more recent decision on the Taxpayer's argument that the State Board could redress her grievance on “equitable/fairness” grounds, in a declaration by Administrative Judge Pete Loesch, when dealing with the same issue in *Theoda Dunn*, Henderson County, Tax Years 1999, 2000, 2001, 2002, 2003, 2004:

. . . as an administrative agency, the State Board's powers are limited to those delegated by the legislature. Thus, for example, in Trustees of Church of Christ (Obion County, Final Decision and Order, February 9, 1993), the Assessment Appeals Commission declined to backdate a church's claim of property tax exemption under T.C.A. § 67-5-212 on the following rationale:

There is no doubt that during the tax years at issue here, 1988 and 1989, the applicant was an exempt religious institution



using its property for the religious purposes for which it exists, as required by our statute to qualify for property tax exemption. The applicant had not, however, made its application as the statute requires for tax years 1988 and 1989. The church urges the Commission to exercise equitable powers and take into consideration the unfortunate circumstances that led it to delay its application. We have no power to waive the requirements of the exemption statute, however. *Id.* at p. 2. See *also* Tenn. Atty. Gen. Op. 92-62 (October 8, 1992).

With respect to the issue of market value, the administrative judge finds that Ms. Dempsey simply introduced insufficient evidence to affirmatively establish the market value of subject property as of January 1, 2006, the relevant assessment date pursuant to Tenn. Code Ann. § 67-5-504(a).

The administrative judge finds that **rather than averaging comparable sales, comparables must be adjusted**. As explained by the Assessment Appeals Commission in *E.B. Kissell, Jr.* (Shelby County, Tax Years 1991 and 1992) as follows:

The best evidence of the present value of a residential property is generally sales of properties comparable to the subject, comparable in features relevant to value. Perfect comparability is not required, but relevant differences should be explained and accounted for by reasonable adjustments. If evidence of a sale is **presented without the required analysis of comparability, it is difficult or impossible for us to use the sale as an indicator of value**. . . . (emphasis supplied) Final Decision and Order at 2.

In analyzing the arguments of the taxpayer, the administrative judge must also look to the applicable and acceptable standards in the industry when “comparing” the sales of similar properties as the taxpayer did here.

The administrative judge finds that the procedure normally utilized in the sales comparison approach has been summarized in one authoritative text as follows:

To apply the sales comparison approach, an appraiser follows a systematic procedure.

1. Research the competitive market for information on sales transactions, listings, and offers to purchase or sell involving properties that are similar to the subject property in terms of characteristics such as property type, date of sale, size, physical condition, location, and land use constraints. The goal is to find a set of comparable sales as similar as possible to the subject property.
2. Verify the information by confirming that the data obtained is factually accurate and that the transactions reflect arm’s-length, market considerations. Verification may elicit additional information about the market.
3. Select relevant units of comparison (e.g., price per acre, price per square foot, price per front foot) and develop a comparative analysis for each unit. The goal here is to define and identify a unit of comparison that explains market behavior.



4. Look for differences between the comparable sale properties and the subject property using the elements of comparison. Then **adjust the price of each sale property to reflect how it differs from the subject property or eliminate that property as a comparable.** This step typically involves using the most comparable sale properties and then adjusting for any remaining differences.

Reconcile the various value indications produced from the analysis of comparables into a single value indication or a range of values.

[Emphasis supplied] Appraisal Institute, *The Appraisal of Real Estate* at 422 (12<sup>th</sup> ed. 2001). Andrew B. & Majorie S. Kjellin, (Shelby County, 2005)

Ms. Dempsey failed to do any appropriate comparisons and therefore has failed to meet her burden.

#### ORDER

It is therefore ORDERED that the following value and assessment be adopted for tax year 2006:

<u>LAND VALUE</u>	<u>IMPROVEMENT VALUE</u>	<u>TOTAL VALUE</u>	<u>ASSESSMENT</u>
\$ 40,600	\$281,600	\$321,900	\$80,475

It is FURTHER ORDERED that any applicable hearing costs be assessed pursuant to Tenn. Code Ann. § 67-5-1501(d) and State Board of Equalization Rule 0600-1-.17.

Pursuant to the Uniform Administrative Procedures Act, Tenn. Code Ann. §§ 4-5-301—325, Tenn. Code Ann. § 67-5-1501, and the Rules of Contested Case Procedure of the State Board of Equalization, the parties are advised of the following remedies:

1. A party may appeal this decision and order to the Assessment Appeals Commission pursuant to Tenn. Code Ann. § 67-5-1501 and Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization. Tennessee Code Annotated § 67-5-1501(c) provides that an appeal “**must be filed within thirty (30) days from the date the initial decision is sent.**” Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization provides that the appeal be filed with the Executive Secretary of the State Board and that the appeal “**identify the allegedly erroneous finding(s) of fact and/or conclusion(s) of law in the initial order**”; or

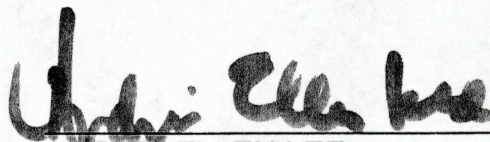
2. A party may petition for reconsideration of this decision and order pursuant to Tenn. Code Ann. § 4-5-317 within fifteen (15) days of the entry of the order. The petition for reconsideration must state the specific grounds upon which relief is requested. The filing of a petition for reconsideration is not a prerequisite for seeking administrative or judicial review; or

3. A party may petition for a stay of effectiveness of this decision and order pursuant to Tenn. Code Ann. § 4-5-316 within seven (7) days of the entry of the order.



This order does not become final until an official certificate is issued by the Assessment Appeals Commission. Official certificates are normally issued seventy-five (75) days after the entry of the initial decision and order if no party has appealed.

ENTERED this 21st day of February, 2007.



ANDREI ELLEN LEE  
ADMINISTRATIVE JUDGE  
TENNESSEE DEPARTMENT OF STATE  
ADMINISTRATIVE PROCEDURES DIVISION

c: Ms. Cathey Dempsey  
John Isbell, Assessor of Property

<sup>i</sup> Ms. Dempsey stated that she submitted the actual appraisal to the County Board and attached a copy to her appeal. It is noted that the County Board records did not show an appraisal and none is contained in the technical record of this appeal. However, even if the appraisal was found without the appraiser present the document might still have had no effect.